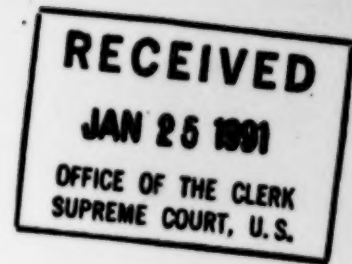
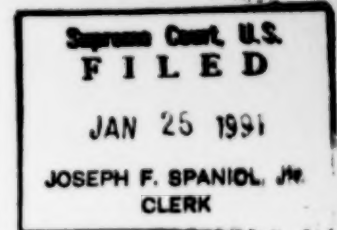


ORIGINAL



January 24, 1991

Kenneth J. Rose
923 Carolina Ave.
Durham, N.C. 27705



Honorable Joseph F. Spaniol, Jr.
Clerk
Supreme Court of the United States
One First Street, Northeast
Washington, D.C. 20453

Re: Stringer v. Black, No. 90-6616

Dear Mr. Spaniol:

Please find enclosed for filing Petitioner's
Supplemental Brief in Support of Petition for Writ of
Certiorari.

Thank you for your assistance in this matter.

Very truly yours,



Kenneth J. Rose
Counsel for James R. Stringer

Encl.

cc: Hon. Marvin L. White, Jr.

4 PM

No. 90-6616
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

JAMES R. STRINGER Petitioner

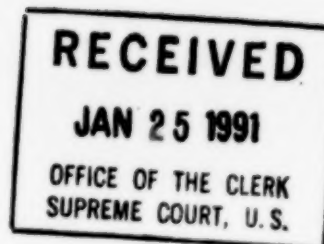
v.

LEE ROY BLACK, Commissioner
Mississippi Department of Corrections, Respondent

**SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI**

James R. Stringer files this supplemental brief in support of his petition for writ of certiorari pursuant to Rule 15.7 of the Rules of the United States Supreme Court in light of this Court's decision in Parker v. Dugger, No. 89-5961 (January 22, 1991). This decision relates to Issue III(b) of the Petition for Writ of Certiorari which argues that the court below erred by refusing to apply Clemons v. Mississippi, 494 U.S. ___, 110 S.Ct. 1441 (1990) retroactively.

In Parker, this Court specifically applied Clemons to a habeas case to invalidate a death sentence which became final before Clemons. In Parker, two aggravating circumstances were invalidated by the Florida Supreme Court. However, that court neither applied a "harmless error" analysis, nor did it "reweigh" the remaining valid aggravators against mitigation, Parker v. State, 458 So.2d 750 (Fla. 1984). This Court granted certiorari after Parker was denied habeas relief by the Eleventh Circuit. The Court stated, "Following Clemons, a reviewing court is not compelled to remand. It may instead reweigh the evidence or conduct a harmless error analysis based on what the sentencer actually found. What the Florida Supreme Court could not do, but what it did, was to ignore the evidence of mitigating circumstances in the record. . . ." Parker, slip op. at 11. "After striking two aggravating circumstances, the Florida Supreme Court affirmed Parker's death sentence without considering the mitigating circumstances.




This affirmance was invalid because it deprived Parker of the individualized treatment to which he is entitled under the Constitution. See Clemons, supra at ___. "Parker, slip op. at 14.

Parker demonstrates that Clemons v. Mississippi applies retroactively to James Stringer's case.

This being so, this case should be remanded for further consideration. Given the applicability of Clemons, it is unclear whether the Fifth Circuit would hold Maynard v. Cartwright, 486 U.S. 356 (1988), standing alone, nonretroactive to James Stringer's case. Stringer v. Jackson, 909 F.2d 111 (5th Cir. 1990). The Fifth Circuit panel in this case considered Clemons and Cartwright as a unit for purposes of determining retroactivity. Id. Indeed, the case upon which the Stringer panel relies, Smith v. Black, 904 F.2d 950 (5th Cir. 1990), leaves the question of the retroactivity of Cartwright open. See also Hill v. Black, 920 F.2d 249 (5th Cir. December 14, 1990) (relying on Smith for the proposition that Clemons was nonretroactive, without reaching the question of whether Cartwright was nonretroactive to cases in post-conviction proceedings.)

Wherefore, premises considered, James Stringer's sentence of death should be remanded for further consideration in light of Parker v. Dugger.



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the Supplemental Brief in Support of Petition for Writ of Certiorari was this date posted via first class mail, postage prepaid, to:

Marvin L. White, Jr.
Assistant Attorney General
P.O. Box 220
Jackson, MS. 39202
(601) 359-3680

This the 24th day of January, 1991.


Kenneth J. Rose